



**Service Contract
For
Wastewater, Water and Stormwater Utilities
Capital Improvements and Asset Management
Between
The City of Stockton and OMI/Thames Water
Stockton, Inc.**

Dated 2/19/2003

Volume 1 of 3

Execution Copy

SERVICE CONTRACT
FOR
WASTEWATER, WATER AND STORMWATER UTILITIES
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

between

THE CITY OF STOCKTON, CALIFORNIA

and

OMI/THAMES WATER STOCKTON, INC.

Dated

February 19, 2003

TABLE OF CONTENTS

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1.	DEFINITIONS.....	4
SECTION 1.2.	INTERPRETATION	26
	(A) References Hereto	26
	(B) Gender and Plurality	26
	(C) Persons	26
	(D) Headings	26
	(E) Entire Service Contract	26
	(F) ICI Design Requirements	26
	(G) Standards of Workmanship and Materials	26
	(H) Technical Standards and Codes	27
	(I) Liquidated Damages	27
	(J) Causing Performance	27
	(K) Party Bearing the Cost of Performance	27
	(L) Cost of Performing Excludes Costs Resulting from Legal Proceeding.....	27
	(M) Assistance	28
	(N) Interpolation	28
	(O) Prudent Industry Practice and Good Engineering and Construction Practice.....	28
	(P) Applicability and Stringency of Contract Standards	28
	(Q) Delivery of Documents in Digital Format	28
	(R) Severability	29
	(S) Drafting Responsibility.....	29
	(T) No Third Party Rights.....	29
	(U) References to Treatment.....	29
	(V) References to Days.....	29
	(W) References to Including	29
	(X) References to Knowledge	29
	(Y) Counterparts.....	30
	(Z) Governing Law	30
	(AA) Defined Terms.....	30

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1.	REPRESENTATIONS AND WARRANTIES OF THE CITY	31
	(A) Existence and Powers.....	31
	(B) Due Authorization and Binding Obligation	31
	(C) No Conflict	31
	(D) No Approvals Required.....	31
	(E) No Litigation.....	31
	(F) Claims and Demands.....	32
	(G) Applicable Law Compliance.....	32
	(H) Hazardous Materials and Regulated Substances	32
SECTION 2.2.	REPRESENTATIONS AND WARRANTIES OF THE COMPANY	32
	(A) Existence and Powers.....	32
	(B) Due Authorization and Binding Obligation	32

TABLE OF CONTENTS

(continued)

	(C) No Conflict	32
	(D) No Approvals Required	33
	(E) No Litigation	33
	(F) Applicable Law Compliance	33
	(G) Practicability of Performance	33
	(H) Patents and Licenses	34
	(I) Information Supplied by the Company and the Guarantors	34
SECTION 2.3.	KNOWLEDGE-BASED REPRESENTATIONS	34

ARTICLE III

TERM

SECTION 3.1.	EFFECTIVE DATE AND INITIAL TERM	35
SECTION 3.2.	CITY RENEWAL OPTION	35

ARTICLE IV

TRANSITION PERIOD

SECTION 4.1.	COMPANY TRANSITION PERIOD RESPONSIBILITIES	36
	(A) Obligation to Proceed	36
	(B) Access to Managed Assets During Transition Period	38
	(C) Notice of Default	38
SECTION 4.2.	CITY TRANSITION PERIOD RESPONSIBILITIES	38
SECTION 4.3.	COMMENCEMENT DATE CONDITIONS	39
	(A) Commencement Date Conditions Defined	39
	(B) Commencement Date Conditions for which Both Parties Have Responsibility	40
	(C) No Payment to Either Party for Transition Period Expenses of the Other	40
SECTION 4.4.	CLOSING THE TRANSITION PERIOD	40
	(A) Establishment of Commencement Date	40
	(B) Failure of Conditions	41
SECTION 4.5.	CITY SUPPLY CONTRACTS	41
SECTION 4.6.	CITY UTILITY CONTRACTS	41
	(A) Current Workscope	41
	(B) Workscope Changes	42

ARTICLE V

MANAGEMENT AND OPERATION

SECTION 5.1.	OWNERSHIP AND USE OF THE MANAGED ASSETS	43
	(A) City Ownership	43
	(B) Use	43
	(C) Use of Transferred Property	43
	(D) Retained City Assets	43
	(E) Liens and Encumbrances	43
	(F) Company Property	43
SECTION 5.2.	COMPANY OBLIGATIONS GENERALLY	44
	(A) Management Responsibility	44
	(B) Transfer and Application of Industry Experience	44
SECTION 5.3.	CITY OBLIGATIONS GENERALLY	44
SECTION 5.4.	MANAGED ASSETS CONDITION CONFIRMATION	45

TABLE OF CONTENTS

(continued)

	(A) Familiarity with Managed Assets.....	45
	(B) "As-Is" Condition of Managed Assets.....	45\\
	(C) Limitations on the Company's Assumption of "As-Is" Risk; Uncontrollable Circumstances.....	46\\
	(D) City Capital Projects.....	46
SECTION 5.5.	SERVICE COORDINATION.....	46
	(A) Company's General Manager	46
	(B) Company's Operations Director	47
	(C) Company's Chief Plant Operator	47
	(D) Company's Water Superintendent.....	47
	(E) City Approval of Company's Senior Staff.....	47
	(F) Company's Senior Supervisors.....	48
	(G) Communications and Meetings.....	48
	(H) Customer Service	48
	(I) Damage to Customers.....	49
SECTION 5.6.	OPERATION AND MAINTENANCE MANUALS	49
	(A) Development	49
	(B) City Review and Approval.....	50
	(C) Supplements for Initial Capital Improvements and Capital Modifications.....	50
SECTION 5.7.	STAFFING AND PERSONNEL TRAINING	50
	(A) Staffing.....	50
	(B) Changes in Staffing Plan	50
	(C) Training	51
SECTION 5.8	ENERGY SUPPLY AND CONSUMPTION.....	51
SECTION 5.9	CO-GENERATION FACILITY	51
	(A) Operation and Management of Co-Generation Facility.....	51
	(B) Co-Generation Facility Governmental Approvals.....	51
	(C) Commencement of Demonstration Period and Testing.....	51
	(D) Completion of Demonstration Period.....	52
	(E) Achievement of Test Standards.....	52
	(F) Test Standards not Achieved and Co-Generation Failure.....	53
	(G) Uncontrollable Circumstances during Co-Generation Test	53
	(H) Co-Generation Expert	53
	(I) Co-Generation Solution.....	54
	(J) Costs of Implementation of Co-Generation Solution	54
	(K) Other Costs Associated with the Co-Generation Facility	54
SECTION 5.10.	FINISHED WATER SUPPLY.....	54
	(A) Purchased Water - Generally.....	54
	(B) Purchased Water - Stockton East Water Sale Contract.....	55
	(C) Well Water - Generally	55
	(D) Well Water - Additional Wells.....	55
	(E) Well Water - Impact of Production on Service Fee	55
	(F) Well Water - Degradation of Raw Well Water Quality	56
	(G) Well Water - New Sources of Finished Water.....	56
SECTION 5.11.	SAFETY AND SECURITY.....	56
	(A) Safety.....	56
	(B) OSHA and ADA	57
	(C) Security.....	57
SECTION 5.12.	COMPLIANCE WITH APPLICABLE LAW.....	57
	(A) Compliance Obligation	57
	(B) Sampling, Testing and Laboratory Work	57
	(C) Investigations of Non-Compliance	57
	(D) Fines, Penalties and Remediation	58
	(E) Applicable Law Pertaining to Odor	58

TABLE OF CONTENTS

(continued)

	(F) No Nuisance Covenant	59
SECTION 5.13.	OPERATING AND CONSTRUCTION GOVERNMENTAL APPROVALS.....	59
	(A) Applications and Submittals	59
	(B) Data and Information.....	59
	(C) Non-Compliance and Enforcement.....	60
	(D) Reports to Governmental Bodies.....	60
	(E) Potential Regulatory Change	60
SECTION 5.14.	CITY ACCESS TO MANAGED ASSETS.....	60
SECTION 5.15.	CUSTOMER SERVICE	61
	(A) Generally.....	61
	(B) Customer Service Requirements	61
	(C) Reports.....	62
	(D) Liquidated Damages.....	62
SECTION 5.16.	METER-RELATED SERVICES.....	62
	(A) Generally.....	62
	(B) Meter-Related Requirements.....	62
SECTION 5.17.	ASSET AND FINANCIAL RECORDS	62
	(A) System Records.....	62
	(B) Availability of System Records to City	63
	(C) Record Documents and Mapping	63
	(D) Financial Records.....	63
	(E) Company Financial Reports.....	64
	(F) Inspection, Audit and Adjustment.....	64
SECTION 5.18.	PERIODIC REPORTS	64
	(A) Monthly Operations	64
	(B) Annual Operations and Maintenance Reports.....	65
	(C) Default Reports.....	66
	(D) Permit Communications and Reports.....	66
SECTION 5.19.	EMERGENCIES	66
	(A) Emergency Plan	66
	(B) Emergency Action	66
	(C) Use of Company Employees for Civil Defense.....	66
SECTION 5.20.	COST REDUCTION AND SERVICE IMPROVEMENT	67
SECTION 5.21.	SYSTEM EXPANSION AND NEW INFRASTRUCTURE	67
	(A) Assistance to Developers.....	67
	(B) Company Responsibility For Management of New Infrastructure.....	67
	(C) Additional Water Meters For New Infrastructure.....	67

ARTICLE VI

MUNICIPAL/INDUSTRIAL PRETREATMENT PROGRAM

SECTION 6.1.	IPP ADMINISTRATION BY THE COMPANY.....	68
	(A) Industrial Pretreatment Program	68
	(B) Company IPP Participation Generally.....	68
	(C) IPP Administration Generally	68
	(D) General SIU Compliance Monitoring	68
	(E) Transition Program Administration Duties.....	69
	(F) Ongoing Program Administration Duties.....	70
	(G) Field Inspection, Flow Monitoring and Flow Sampling	71
	(H) Laboratory Analyses of Wastewater Samples	72
	(I) Preparation of Annual Pretreatment Report	72
	(J) IPP Violation Investigations.....	73
	(K) Notice to City of Violations	73

TABLE OF CONTENTS

(continued)

	(L) Company Enforcement Assistance	73
	(M) Fines and Penalties	74
SECTION 6.2.	IPP ENFORCEMENT BY THE CITY	74
	(A) Industrial Discharge Permits.....	74
	(B) Enforcement.....	74

ARTICLE VII

PERFORMANCE

SECTION 7.1.	MANAGED ASSETS PERFORMANCE GENERALLY	75
	(A) Reliance	75
	(B) Maximum Capacity Utilization	75
	(C) Curtailments and Shutdowns	75
	(D) Water and Wastewater Ownership and Limitations on Company Rights.....	75
SECTION 7.2.	PLANT EFFLUENT GUARANTEE.....	76
	(A) Applicable Law Limits	76
	(B) Order and Permit Standards	76
	(C) Service Fee Reductions for Plant Effluent Exceedences.....	76
	(D) Adjustment of Service Fee Reduction	77
	(E) Indemnity for Loss-and-Expense from Non-Complying Plant Effluent	77
	(F) Change in Law Affecting Plant Effluent	77
SECTION 7.3.	ODOR GUARANTEE.....	77
	(A) Applicable Law Limits	77
	(B) Contract Limits	77
	(C) Odor Control Practices Report.....	78
	(D) Preventing Recurrence of Violations Generally	78
	(E) Preventing Recurrence of Violations at Plant Site.....	78
	(F) Private Sewer Systems	79
SECTION 7.4.	TRUCKED-IN MATERIAL	79
	(A) Trucked-In Material Guarantee.....	79
	(B) Other Trucked-In Material	79
	(C) Applicable Law Limits	80
	(D) Treatment of Trucked-In Material	80
	(E) Trucked-In Material Delivery Protocol.....	80
	(F) Alternative Disposal of Trucked-In Material	80
	(G) Failure of Alternative Disposal	81
SECTION 7.5.	SYSTEM RESIDUALS DISPOSAL GUARANTEE	81
SECTION 7.6.	FINISHED WATER QUALITY GUARANTEE	81
	(A) Applicable Law Limits	81
	(B) Applicability of Finished Water Quality Guarantee	81
	(C) Conditions to Relief.....	81
	(D) Indemnity for Loss-and-Expense from Non-Complying Finished Water	81
	(E) Change in Law Affecting Finished Water	82
SECTION 7.7.	WATER PRESSURE AND FLOW GUARANTEE	82
SECTION 7.8.	UNACCOUNTED-FOR WATER GUARANTEE	82
	(A) Standard	82
	(B) Liquidated Damages for Breach of Unaccounted-For Water Guarantee	82
	(C) Adjustment to Standard.....	83
SECTION 7.9.	STORMWATER COLLECTION GUARANTEE	83
	(A) Applicable Law Limits	83

TABLE OF CONTENTS

(continued)

	(B) Applicability of Stormwater Collection Guarantee	83
	(C) Response and Mitigation	83
	(D) Indemnity for Loss-and-Expense from Non-Complying Stormwater Discharge	83
	(E) Change in Law Affecting Stormwater Discharge	84
SECTION 7.10.	ENVIRONMENTAL GUARANTEE	84
SECTION 7.11.	AIR EMISSIONS GUARANTEE	84
SECTION 7.12.	CITY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES	84
	(A) Remedies	84
	(B) Performance Testing	85
SECTION 7.13.	UPSETS AND EXCESSIVE INFLUENT AFFECTING COMPANY COMPLIANCE WITH PERFORMANCE GUARANTEES	85
	(A) Relief Generally	85
	(B) Upsets and Excessive Influent	85
	(C) Response Measures to Upsets and Excessive Influent	86
	(D) Service Fee Impact	86
SECTION 7.14.	TESTING, METERING AND WEIGHING	86
	(A) Testing	86
	(B) Metering and Weighing	86
SECTION 7.15.	ADMINISTRATIVE SANCTIONS	87
	(A) Compliance Failures	87
	(B) Liquidated Damages	88
SECTION 7.16.	RELEASES, LEAKS AND SPILLS	88
	(A) Unauthorized Releases Prohibited	88
	(B) Notification and Reporting	88
	(C) Cleanup and Costs	89
SECTION 7.17.	PRE-EXISTING ENVIRONMENTAL CONDITIONS AND SPECIFIED SITE CONDITIONS	89

ARTICLE VIII

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 8.1.	MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY	90
	(A) Ordinary Maintenance	90
	(B) Inspections, Cleaning and Blockage Removal	90
	(C) Repair and Maintenance of Site Grounds	90
	(D) Major Maintenance, Repair and Replacements	90
	(E) Underground Piping Repair and Replacements	91
	(F) Replacements Constituting Capital Modifications	91
SECTION 8.2.	MANAGED ASSET EVALUATIONS	92
	(A) Appointment and Compensation of Independent CPA and Independent Evaluator	92
	(B) Initial and Final Valuation of Transferred Property	92
	(C) Initial Evaluation of the Managed Assets	92
	(D) Inventory and Record Review	93
	(E) Final Evaluation of the Managed Assets	93
	(F) Required Condition of Managed Asset Structures Upon Return to the City	94
	(G) Required Condition of Managed Asset Equipment Upon Return to the City	94
	(H) Capital Modifications	94
	(I) Materiality	95
	(J) Report Review, Comment and Finalization	95

TABLE OF CONTENTS

(continued)

SECTION 8.3.	PERIODIC MAINTENANCE INSPECTIONS	95
	(A) Annual Maintenance Inspection	95
	(B) Full Scale Triennial Inspections	95
	(C) Remediation	95
	(D) Unscheduled Inspections	96
SECTION 8.4.	COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM	96
SECTION 8.5.	MAINTENANCE, REPAIR AND REPLACEMENT PLAN	96
SECTION 8.6.	DISPOSAL OF SURPLUS EQUIPMENT	97
SECTION 8.7.	WARRANTIES	97
SECTION 8.8.	LOSS, DAMAGE OR DESTRUCTION TO THE MANAGED ASSETS	97
	(A) Prevention and Repair	97
	(B) Insurance and Other Third Party Payments	97
	(C) Uninsured Costs	98
	(D) Repair of City and Private Property	98

ARTICLE IX

SYSTEM RESIDUALS DISPOSAL

SECTION 9.1.	SYSTEM RESIDUALS MANAGEMENT SERVICES GENERALLY	99
	(A) Performance	99
	(B) General Plan of Disposal	99
	(C) General Allocation of Risk in the Transportation and Disposal of System Residuals	99
	(D) System Residuals Disposal Information and Reporting	99
	(E) Indemnity	100
	(F) Subcontracts	100
	(G) Oxidation Ponds	100
SECTION 9.2.	STORAGE AND TRANSPORTATION OF SYSTEM RESIDUALS	100
	(A) On-Site Storage and Stockpiling	100
	(B) Off-Site Storage and Stockpiling	101
	(C) Transportation Operations	101
SECTION 9.3.	DISPOSAL OF SYSTEM RESIDUALS	101
	(A) Acceptable Disposal Site	101
	(B) Designated Disposal Site and Disposal Subcontracts	101
SECTION 9.4.	UNCONTROLLABLE CIRCUMSTANCES OTHER THAN CHANGES IN LAW AFFECTING SYSTEM RESIDUALS MANAGEMENT SERVICES	102
	(A) On-Site	102
	(B) Off-Site	102
	(C) Changes in Law	103
SECTION 9.5.	HAZARDOUS SYSTEM RESIDUALS	103
	(A) Protocol	103
	(B) Notification, Reporting and Disposal	103
	(C) On-Site Remediation and Off-Site Disposal	103
	(D) Off-Site Remediation	104
	(E) Reimbursement of Costs	104
SECTION 9.6.	CHANGES IN LAW AFFECTING SYSTEM RESIDUALS MANAGEMENT SERVICES	104
	(A) Change in Law Relief Authorized and Limited	104
	(B) Managed Assets-Specific System Residuals Change in Law	104
	(C) Designated Disposal Site-Specific System Residuals Change in Law Defined	105
	(D) Examples of Designated Disposal Site-Specific System Residuals Changes in Law	106

TABLE OF CONTENTS

(continued)

(E)	Events Not Constituting Designated Disposal Site-Specific System Residuals Changes in Law.....	106
(F)	Cost Substantiation and Mitigation for Designated Disposal Site-Specific System Residuals Changes in Law.....	107
(G)	Mitigation.....	107
(H)	Certain Severance Rights.....	108
(I)	Adjustment of Service Fee.....	108
(J)	Applicable Law.....	108
(K)	Changes in Law Affecting Other Contract Services.....	108

ARTICLE X

DESIGN/BUILD OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 10.1.	DESIGN/BUILD GENERALLY.....	109
	(A) Commencement of Design/Build Work.....	109
	(B) Pre-Approval Authorization.....	109
	(C) City Right to Delay or Withhold Notice-to-Proceed.....	109
	(D) Effect of Delay or Withholding of Notice-to-Proceed on Company's Obligations.....	110
	(E) CEQA Compliance.....	110
	(F) Title and Risk of Loss.....	110
	(G) Elements of the ICI Design/Build Work.....	111
	(H) Subcontracts.....	111
	(I) Changes to ICI Design/Build Work.....	111
	(J) Damage or Destruction to the ICI Design/Build Work.....	111
	(K) Surplus Equipment.....	111
	(L) Encumbrances.....	111
	(M) Warranties.....	111
	(N) Payment of Costs.....	112
	(O) Performance of Management Services During ICI Design/Build Work.....	112
SECTION 10.2.	FINALIZATION OF ORDER AND PERMITS.....	112
	(A) Order and Permits.....	112
	(B) Finalization of Order and Permits.....	112
	(C) Effect of Permit Finalization on Price of Contract Services.....	113
SECTION 10.3.	COMPANY DESIGN.....	113
	(A) Sole Responsibility and Liability.....	113
	(B) Conformity of Company Design Documents with ICI Design Requirements.....	114
	(C) City Interest in ICI Design Requirements.....	114
	(D) Company Requested Changes.....	114
	(E) Procedure for City Review of Design Submittals.....	114
	(F) Documents at the Site.....	115
SECTION 10.4	GOVERNMENTAL APPROVALS.....	115
	(A) Applications for Governmental Approvals.....	115
	(B) Company Information.....	115
	(C) Company Information and Assumption of Permitting Risk.....	116
	(D) Change in Law Not Related to Governmental Approvals.....	116
SECTION 10.5.	COMPANY CONSTRUCTION.....	116
	(A) Construction Practice.....	116
	(B) Conditions to Commencement of Construction.....	117
SECTION 10.6.	PAYMENT OF THE ICI DESIGN/BUILD PRICE.....	118
	(A) City Financing.....	118
	(B) ICI Design/Build Price Generally.....	118

TABLE OF CONTENTS

(continued)

	(C) Fixed ICI Design/Build Price.....	118
	(D) Effect of Pre-Approval Authorization or Adjustment of Fixed JCI Design/Build Price	118
	(E) Fixed ICI Design/Build Price Adjustments.....	118
	(F) Limitation on Payments for Initial Capital Improvement Costs	119
	(G) Construction Disbursement Requisition Procedure	119
	(H) Retainage	119
	(I) Certification of Requisitions	120
	(J) Information Supporting Requisition	120
	(K) Review and Payment of Requisitioned Amounts.....	120
	(L) Permissible Withholdings.....	121
	(M) Disbursement Dispute Procedures.....	122
	(N) Required Company Oversight Engineer Certification	122
	(O) Certification of Amounts Due.....	122
	(P) SRF Financing.....	122
	(Q) Milestones and Schedules of Values	123
SECTION 10.7.	ENGAGEMENT OF CITY ENGINEER.....	123
	(A) Duties	123
	(B) Fees.....	123
SECTION 10.8.	PROGRESS SCHEDULE AND REPORTS.....	124
SECTION 10.9.	CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.....	124
	(A) Observation and Design Review Program	124
	(B) Company Tests.....	124
	(C) City Tests, Observations and Inspections.....	125
	(D) Certificates and Reports.....	125
	(E) Notice of Covering ICI Design/Build Work	125
	(F) Meetings and Design/Build Review.....	126
SECTION 10.10.	CORRECTION OF WORK	126
	(A) Correction of Non-Conforming ICI Design/Build Work.....	126
	(B) Election to Accept Non-Conforming ICI Design/Build Work.....	127
SECTION 10.11.	DELIVERABLE MATERIAL.....	127
SECTION 10.12.	PERSONNEL	127
	(A) Personnel Performance.....	127
	(B) Prevailing Wages	127
	(C) Company Construction Superintendent.....	127
	(D) City Rights With Respect to Key Personnel.....	128
	(E) Labor Disputes.....	128
SECTION 10.13.	CONSTRUCTION BOOKS AND RECORDS	128

ARTICLE XI

ACCEPTANCE OF THE INITIAL CAPITAL IMPROVEMENTS

SECTION 11.1.	ICI SUBSTANTIAL COMPLETION.....	130
	(A) Conditions for ICI Substantial Completion.....	130
	(B) Final Punch List.....	131
SECTION 11.2.	NOTICE OF START-UP OPERATIONS	131
	(A) Submittal of ICI Acceptance Test Plan	131
	(B) Notice of ICI Substantial Completion	132
	(C) Notice of Commencement of ICI Acceptance Test	132
SECTION 11.3.	CONDUCT OF ICI ACCEPTANCE TESTS	132
SECTION 11.4.	ICI ACCEPTANCE DATE CONDITIONS	132
SECTION 11.5.	TEST REPORT	133
SECTION 11.6.	CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.....	133

TABLE OF CONTENTS

(continued)

	(A) ICI Acceptance Date Concurrence	133
	(B) ICI Acceptance Date Disagreement	134
SECTION 11.7.	EXTENSION PERIOD	134
SECTION 11.8.	SCHEDULED ICI ACCEPTANCE DATE	135
	(A) Schedule for Completing the Initial Capital Improvements	135
	(B) Adjustment of Scheduled ICI Acceptance Date	136
	(C) Delay Liquidated Damages	136
SECTION 11.9.	FAILURE TO MEET ICI ACCEPTANCE STANDARD	137
SECTION 11.10.	FINAL COMPLETION	137
	(A) Requirements	137
	(B) Final Certificate and Claims Statement	138
SECTION 11.11.	NO ICI ACCEPTANCE, WAIVER OR RELEASE	138
SECTION 11.12.	COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED	139

ARTICLE XII

CAPITAL MODIFICATIONS

SECTION 12.1.	CAPITAL MODIFICATIONS GENERALLY	140
	(A) Purpose	140
	(B) City Approval and Change Orders	140
	(C) Party Responsible for Costs	140
	(D) Cost Savings	140
SECTION 12.2.	CAPITAL MODIFICATIONS AT COMPANY REQUEST	140
SECTION 12.3.	CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES	141
SECTION 12.4.	CAPITAL MODIFICATIONS AT CITY DIRECTION	141
SECTION 12.5.	PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS	141
	(A) Primary Implementation Procedure	141
	(B) Preliminary Company Plan and City Review	142
	(C) Company Implementation Proposal	142
	(D) Negotiation and Finalization of Company Implementation Proposal	143
	(E) Implementation Procedures	143
SECTION 12.6.	ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS	143
SECTION 12.7.	FINANCING CAPITAL MODIFICATIONS	144
	(A) City Financing	144
	(B) Company Financing	144
SECTION 12.8.	COMPANY NON-IMPAIRMENT RIGHTS	144
	(A) Company Non-Impairment	144
	(B) City Operating Rights	144

ARTICLE XIII

SERVICE FEE AND OTHER PAYMENTS

SECTION 13.1.	SERVICE FEE GENERALLY	146
SECTION 13.2.	SERVICE FEE FORMULA	146
SECTION 13.3.	BASE FEE	146
	(A) Formula	146
	(B) Service Fee Adjustment Factor	146
	(C) Energy Adjustment Factor	147
SECTION 13.4.	FIXED COMPONENT	147

TABLE OF CONTENTS

(continued)

	(A) Fixed Component Generally	147
	(B) Operation and Maintenance Component.....	147
	(C) Sludge Disposal Component	147
	(D) Energy Component.....	147
SECTION 13.5.	VARIABLE COMPONENT	147
	(A) Variable Component Generally.....	147
	(B) Flows and Loadings Element.....	147
	(C) Well Water Element.....	148
	(D) Variable Component Net Credits.....	148
SECTION 13.6.	REIMBURSABLE COSTS	149
SECTION 13.7.	EXTRAORDINARY ITEMS CHARGE OR CREDIT	149
	(A) Extraordinary Items	149
	(B) Treatment of Extraordinary Items Component.....	150
SECTION 13.8.	BILLING AND PAYMENT	150
	(A) Billing.....	150
	(B) Payment	150
	(C) Allocation of Costs.....	151
SECTION 13.9.	ESTIMATES AND ADJUSTMENTS	151
	(A) Pro Rata Adjustments	151
	(B) Budgeting.....	151
	(C) Adjustment to Service Fee.....	151
SECTION 13.10.	ANNUAL SETTLEMENT.....	152
SECTION 13.11.	BILLING STATEMENT DISPUTES	152
SECTION 13.12.	COMPLIANCE WITH INTERNAL REVENUE SERVICE REV. PROC. 97-13	152
SECTION 13.13.	TAX EXEMPTION OF MANAGED ASSETS	153
SECTION 13.14.	SALES AND BUSINESS TAXES.....	153

ARTICLE XIV

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 14.1.	REMEDIES FOR BREACH	154
SECTION 14.2.	EVENTS OF DEFAULT BY THE COMPANY.....	154
	(A) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination	154
	(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination	155
	(C) Other Remedies Upon Company Event of Default.....	156
	(D) Limitation on Termination Damages	156
SECTION 14.3.	EVENTS OF DEFAULT BY THE CITY	157
	(A) Events of Default Permitting Termination	157
	(B) Notice and Cure Opportunity	157
	(C) Termination Liquidated Damages During the Initial Term	158
SECTION 14.4.	CITY CONVENIENCE TERMINATION DURING THE TRANSITION PERIOD.....	158
	(A) City Convenience Termination Option During the Transition Period.....	158
	(B) Cost Records and Reporting.....	158
	(C) Delivery of Transition Period Work Product to the City	158
SECTION 14.5.	CITY CONVENIENCE TERMINATION DURING THE MANAGEMENT PERIOD.....	159
	(A) Termination Right and Fee.....	159
	(B) Uncontrollable Circumstances	159
	(C) Corporate Integrity.....	159

TABLE OF CONTENTS

(continued)

	(D) Payment of Amounts Owning Through the Termination Date	160
	(E) Termination Fee Payment Contingent Upon Surrender of Possession.....	160
	(F) Adequacy of Termination Payment.....	160
	(G) Consideration for Convenience Termination Payment.....	160
	(H) Completion or Continuance by City	160
	(I) Employment.....	160
SECTION 14.6.	OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION	160
	(A) Company Obligations.....	160
	(B) Hiring of Company Personnel.....	162
	(C) Continuity of Service and Technical Support	162
	(D) Company Payment of Costs.....	163
	(E) Exit Transition Plan	163
SECTION 14.7.	SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION	163
SECTION 14.8.	NO WAIVERS	163
SECTION 14.9.	NO CONSEQUENTIAL OR PUNITIVE DAMAGES	163
SECTION 14.10.	FORUM FOR DISPUTE RESOLUTION.....	164
SECTION 14.11.	NON-BINDING MEDIATION	164
	(A) Rights to Request and Decline	164
	(B) Procedure.....	164
	(C) Non-Binding Effect.....	164
	(D) Relation to Judicial Legal Proceedings	164

ARTICLE XV

INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 15.1.	INSURANCE.....	165
	(A) Company Insurance.....	165
	(B) Insurers, Deductibles and City Rights.....	165
	(C) Certificates, Policies and Notice.....	165
	(D) Maintenance of Insurance Coverage.....	166
SECTION 15.2.	UNCONTROLLABLE CIRCUMSTANCES.....	166
	(A) Relief from Obligations.....	166
	(B) Notice and Mitigation	167
	(C) Conditions to Performance, ICI Design/Build Price, Service Fee and Schedule Relief.....	167
	(D) Capital Modifications	168
	(E) Share of Costs of Uncontrollable Circumstances.....	168
	(F) ICI Acceptance of Relief Constitutes Release.....	169
SECTION 15.3.	INDEMNIFICATION BY THE COMPANY	169

ARTICLE XVI

SECURITY FOR PERFORMANCE

SECTION 16.1.	GUARANTORS	170
	(A) Guaranty Agreements	170
	(B) Material Decline in Guarantor's Credit Standing	170
	(C) Credit Enhancement After ICI Acceptance	170
	(D) Guarantor Annual Reports.....	170
SECTION 16.2.	BONDS	170
	(A) ICI Construction Performance Bonds and ICI Labor and Materials Bonds	170

TABLE OF CONTENTS

(continued)

	(B) Operations Bond	171
	(C) Monitoring of Sureties	171
SECTION 16.3.	LETTER OF CREDIT	172
	(A) Terms and Purpose	172
	(B) Drawings for Non-Renewal or Bankruptcy	172
	(C) Drawings for Material Breach	172
	(D) Effect of Final Determination of Damages	173
SECTION 16.4.	COST OF PROVIDING SECURITY FOR PERFORMANCE	173
	(A) Inclusion in Service Fee	173
	(B) Release of Security	173

ARTICLE XVII

MISCELLANEOUS PROVISIONS

SECTION 17.1.	RELATIONSHIP OF THE PARTIES	174
SECTION 17.2.	CONTRACT ADMINISTRATION	174
	(A) Administrative Communications	174
	(B) Contract Administration Memoranda	174
	(C) Procedures	175
	(D) Effect	175
SECTION 17.3.	CONTRACT REPRESENTATIVES	175
	(A) Company's Contact Person	175
	(B) City's Contract Administrator	175
	(C) City Approvals and Consents	175
SECTION 17.4.	PROPERTY RIGHTS	176
	(A) Protection from Infringement	176
	(B) Intellectual Property Developed by the Company	176
SECTION 17.5.	INTEREST ON OVERDUE OBLIGATIONS	177
SECTION 17.6.	NEGOTIATED FIXED PRICE WORK	177
	(A) Fixed Component of the Service Fee and Fixed ICI Design/Build Price	177
	(B) Negotiated Lump Sum Pricing of Work for Which the City is Financially Responsible	177
SECTION 17.7.	COST SUBSTANTIATION OF WORK ALREADY PERFORMED	177
	(A) Cost Substantiation Generally	177
	(B) Costs Requiring Cost Substantiation	178
	(C) Cost Substantiation Certificate	178
	(D) Technical Services	178
	(E) Mark-Up	178
	(F) Evidence of Costs Incurred	179
SECTION 17.8.	SUBCONTRACTORS	179
	(A) Use Restricted	179
	(B) Limited City Review and Approval of Permitted Subcontractors	179
	(C) Subcontract Terms and Subcontractor Actions	179
	(D) Indemnity for Subcontractor Claims	180
	(E) ICI Design/Build Contract	180
	(F) Notice to City of Amendments, Breaches and Defaults	180
	(G) Assignability	181
SECTION 17.9.	ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY	181
	(A) Rights as Government Not Limited	181
	(B) No City Obligation to Issue Governmental Approvals	181
SECTION 17.10.	ASSIGNMENT	181
	(A) By the Company	181
	(B) By the City	181

TABLE OF CONTENTS

(continued)

SECTION 17.11.	COMPANY BUSINESS.....	181
SECTION 17.12.	LIMITED RECOURSE TO CITY	182
SECTION 17.13	FURTHER AGREEMENTS	182
	(A) Additional Contract Services	182
	(B) Performance Incentives	182
SECTION 17.14.	COMPLIANCE WITH MATERIAL AGREEMENTS	182
SECTION 17.15.	BINDING EFFECT	182
SECTION 17.16.	AMENDMENT AND WAIVER	182
SECTION 17.17.	NO DISCRIMINATION	183
SECTION 17.18.	NOTICES.....	183
	(A) Procedure	183
	(B) Company Notice Address	183
	(C) City Notice Address	184
SECTION 17.19.	NOTICE OF LITIGATION	184
SECTION 17.20.	FURTHER ASSURANCES.....	184

Note: [Click on underlined text to go to that Appendix](#)

TABLE OF CONTENTS

(continued)

OPERATIONS APPENDICES (Volume 2 of 3)

1. [Managed Assets, Transferred Property and Service Territory Description](#)
2. [Managed Assets Evaluation Protocol](#)
3. [Operating Governmental Approvals and Excluded Conditions](#)
4. [Transition Plan](#)
5. [Intentionally Omitted]
6. [Operation and Maintenance Standards](#)
7. [Repair and Replacement Standards](#)
8. [Odor Control Standards](#)
9. [Hazardous Materials Protocol](#)
10. [Trucked-In Material Protocol](#)
11. [IPP Implementation and Management Standards](#)
12. [Performance Test Procedures](#)
13. [Reference Documents](#)
14. [Customer Service and Emergency Response Standards](#)
15. [City Disclosure Statement](#)
16. [Intentionally Omitted]
17. [Example Service Fee Calculation](#)
18. [Exit Transition Plan](#)

CONSTRUCTION APPENDICES (Volume 3 of 3)

19. [Construction Governmental Approvals](#)
20. [ICI Design and Construction Requirements](#)
21. [ICI Design/Build Review Procedure](#)
22. [Payment and Construction Progress Schedules](#)
23. [ICI Acceptance Test Procedures and Standards](#)
24. [City Capital Projects](#)

GENERAL APPENDICES

25. [Insurance Requirements](#)
26. [Approved Subcontractors](#)

TRANSACTION FORMS

- [click here](#)
- A. Form of CH2M Hill Companies, Ltd. Guaranty Agreement
- B. Form of Thames Water Plc Guaranty Agreement
- C. Form of Letter of Credit
- D. Form of ICI Construction Performance Bond
- E. Form of ICI Labor and Materials Bond
- F. Form of Operations Bond

TABLE OF CONTENTS

(continued)

CERTAIN REFERENCE DOCUMENTS

- G. Implementing Legislation and City Authorizing Resolution
- H. National Pollutant Discharge Elimination System (NPDES) Permit
No. CA0079138, issued on April 26, 2002 (Wastewater)
- I. National Pollution Discharge Elimination System (NPDES) Permit
No. CA5083470, issued on October 18, 2002 (Stormwater)
- J. Cease and Desist Order No. R5-2002-0084, issued by the RWQCB on April 26, 2002

CITY SUPPLY CONTRACTS

- 1. Agreement between the City of Stockton and Radix, dated August 24, 2000
- 2. Agreement between the City of Stockton and Delta Wireless, dated August 15, 2001
- 3. Agreement between the City of Stockton and California Utility Buyers, dated March 30, 1999
- 4. Contract C-99-244 between the City of Stockton and Vulcan Chemical Tech, Inc. dated August 3, 1999
- 5. Agreement between the City of Stockton and Bay Alarm, dated September 6, 2001

CITY UTILITY CONTRACTS

- 6. Agreement between the City of Stockton, Pacific Gardens Sanitary District, Lincoln Village Maintenance District and Colonial Heights Maintenance District for use of the City's Regional Wastewater Control Facilities, dated August 3, 1976
- 7. Agreement between the City of Stockton and the County of San Joaquin for the use by the County of City's Regional Wastewater Control Facilities, dated September 6, 1977
- 8. Southern Water System Operation and Maintenance Agreement between the City of Stockton and the County of San Joaquin for the Operation and Maintenance of the Southern Water System, dated June 8, 1989
- 9. Lincoln Village Water Services Agreement between the City of Stockton and Lincoln Village Maintenance District, dated August 15, 1989
- 10. Agreement between the City of Stockton, Lincoln Village Maintenance District and Colonial Heights Maintenance District, dated July 8, 1980
- 11. Amended Memorandum of Understanding Concerning Pretreatment of Wastewater between the City of Stockton and the County of San Joaquin, dated December 7, 1993
- 12. Department of the Navy Negotiated Sewer Service Contract between the United States of America and the City of Stockton, dated June 1, 1973
- 13. Agreement for Sewage Disposal between the State of California and the City of Stockton, dated June 10, 1964
- 14. Agreement for the Use of the City's Regional Wastewater Control Facilities and System between the City of Stockton and the County of San Joaquin, dated October, 1978
- 15. Sewer Service Agreement between the City of Stockton and Country Club Sanitary District, dated July 30, 1997
- 16. Agreement for the provision of sewage services to Morrison Garden Assessment District between the City of Stockton and the County of San Joaquin, dated October 3, 1978
- 17. Amendment to the Agreement dated May 6, 1975 for the Construction of Airport Interceptor between the City of Stockton and the County of San Joaquin, dated May 9, 1978
- 18. Agreement for Emergency Water Supply between the City of Stockton and California Water Service Company, dated June 10, 1968
- 19. Agreement to add connection at Grisby Place between the City of Stockton and the Lincoln Village Maintenance District, dated October 20, 1970
- 20. Agreement by and between the City of Stockton and the Colonial Heights Maintenance District, dated October 20, 1970

TABLE OF CONTENTS

(continued)

21. Agreement between the City of Stockton, the California Water Service Company, Lincoln Village Maintenance District, Colonial Heights Maintenance District and the Stockton East Water District, dated April 1, 1997
22. Amendment #1 to the Agreement Providing for the Disposal of Sewage between the State of California and the City of Stockton, dated June 13, 1973
23. Amendment to the Agreement for Use of City's Regional Wastewater Control Facilities and System among the City of Stockton and Pacific Gardens Sanitary District, Lincoln Village Maintenance District and Colonial Heights Maintenance District, dated November 7, 1978
24. Letter Agreement between the City of Stockton and California Water Service Co. -- Filbert Street and Miner Avenue, dated April 25, 1995
25. Amendment to the Southern Water System Operation and Maintenance Agreement between the City of Stockton and the County of San Joaquin, dated June 2, 1992
26. Agreement for Emergency Water Supply between the City of Stockton and California Water Service Company, dated November 28, 1984
27. Pipeline License Agreement between the Atchison, Topeka and Santa Fe Railway Company and the City of Stockton, dated October 11, 1990
28. Indenture between Central California Traction Company and City of Stockton, dated June 18, 1990
29. Memorandum of Understanding between the County of San Joaquin and the City of Stockton, dated September 18, 1990
30. Pipeline Agreement Crossing License between Union Pacific Railroad Company and City of Stockton, dated December 17, 1990
31. Lease No. PRC 7219.9 between the State Lands Commission and the City of Stockton, dated June 29, 1988
32. Sewer Service Agreement between the City of Stockton and the Country Club Sanitary District, dated July 13, 1987
33. City-County Agreement Regarding the Taft Area Sanitary Sewer System between the City of Stockton and the County of San Joaquin, dated June 12, 1984
34. Consent to common use between Pacific Gas and Electric Company and the City of Stockton, dated November 16, 1984
35. Sewer Service Agreement between the City of Stockton and the Country Club Sanitary District, dated November 6, 1979
36. Agreement between the City of Stockton and the County of San Joaquin, dated January 30, 1979
37. Agreement for the Positive Location of Underground Utilities between the City of Stockton and Department of Transportation - Right of Way, dated January 28, 2002
38. Agreement C-75-210 between the City of Stockton and the County of San Joaquin, dated May 6, 1975
39. Revocable License for Sanitary Sewer Crossing at March Lane Crossing between the City of Stockton and East Bay Municipal Utility District, dated September 14, 1984
40. Agreement C-84-261 for Emergency Water Supply between the City of Stockton and California Water Service Company, dated November 28, 1984
41. Pipeline Crossing Agreement between the City of Stockton and Union Pacific Railroad Company, dated March 1, 1999
42. Generation Operating Agreement between the City of Stockton and Pacific Gas and Electric Company, dated February 10, 1999
43. Agreement between the City of Stockton and the Lincoln Village Maintenance District, the Colonial Heights Maintenance District, and the Pacific Gardens Maintenance District, dated May 8, 1967
44. Reimbursement Agreement for City of Stockton - RO7696 between the City of Stockton and the State of California acting though the State Lands Commission, dated November 18, 1996
45. Revocable License between City of Stockton and East Bay Municipal Utility District, dated December 24, 1991

TABLE OF CONTENTS

(continued)

46. Lease Agreement between the Redevelopment Agency of the City of Stockton and the City of Stockton, dated November 14, 1991
47. Agreement regarding the East Stockton Sanitary Sewer Project between the City of Stockton and San Joaquin County, dated December 17, 1985
48. License to City of Stockton to enter upon and use Reclamation Board property for the installation and maintenance of four discharge pipes through the right bank levee of the Calaveras River, dated July 8, 1986
49. Pipeline License Agreement 91-158 with Atchison Topeka and Santa Fe Rail Road
50. License 87-190 to use Boat Ramp at Rough & Ready Island
51. Agreement 87-077 for Wheeling of Surface Water with Lincoln Village and Colonial Heights
52. License Agreement 81-228 for O & M of Cal Water Facilities

SERVICE CONTRACT
FOR
WASTEWATER, WATER AND STORMWATER UTILITIES
CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT

THIS SERVICE CONTRACT FOR WASTEWATER, WATER AND STORMWATER UTILITIES CAPITAL IMPROVEMENTS AND ASSET MANAGEMENT is made and entered into as of this 19th day of February, 2003 in the County of San Joaquin, California between the City of Stockton, California, a municipal corporation organized and existing under the laws of the State of California (the "City"), and OMI/Thames Water Stockton, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Company").

RECITALS

(A) The City owns, operates and maintains the City of Stockton, California wastewater, water and stormwater utility systems.

(B) The City is responsible for the collection and treatment of wastewater, the treatment and distribution of potable water, the collection and disposal of stormwater and associated customer billing and revenue collection in the City's service area.

(C) The City's wastewater system consists of the Regional Wastewater Control Facility, a wastewater collection system and associated pump stations and interceptors. The City's water system consists of a water distribution system and associated wells, storage reservoirs and pump stations. The City's stormwater system consists of a stormwater collection system and associated pump stations and outfalls.

(D) The City is authorized under NPDES Permit No. CA0079138 to discharge treated wastewater from the wastewater control facility into the San Joaquin River. The City is authorized under NPDES Permit No. CA0082597 to discharge stormwater from the stormwater collection system into San Joaquin River.

(E) The City is authorized, pursuant to the Charter of the City of Stockton and the Codified Ordinances of the City of Stockton, to utilize a competitive proposal procurement process in contracting for wastewater, water and stormwater utility design, construction and operating, services.

(F) The City has determined that it is in the City's best interests to contract with a private company on a long-term basis to operate, maintain, repair, replace and manage certain wastewater, water and stormwater system assets; to administer the City's industrial pretreatment program; and, to design, construct, start-up and test certain initial capital improvements to the wastewater, water and stormwater systems to meet the requirements of applicable law.

(G) The City issued a request for qualifications and expressions of interests in December, 2000 to firms interested in providing wastewater, water and stormwater utilities capital improvement and asset management services to the City.

(H) The City, on June 26, 2001, based on the technical and financial qualifications set forth in the RFQEI, determined all of the three firms that responded to the RFQEI to be qualified.

(I) The City issued a request for proposals on March 1, 2002 to the prequalified firms to provide capital improvement and asset management services, and set forth in the RFP the criteria for selection of the preferred proposer. Seven RFP Addenda were issued, on March 15, 2002, April 17, 2002, May 20, 2002, June 7, 2002, June 8, 2002, June 14, 2002, and June 25, 2002. The City provided potential proposers with reasonable access to the wastewater, water and stormwater systems to allow them the opportunity to review documentation and to conduct such inspections and reviews as they deemed necessary to become familiar with the wastewater, water and stormwater systems prior to submission of the proposals.

(J) Proposals submitted in response to the RFP were received on July 1, 2002 from OMI/Thames Water Stockton, Inc., Stockton Water Service Company, LLC and US Filter Operating Services, Inc. A proposal clarification process was conducted commencing in August, 2002 and post-proposal clarification submittals were received from each of the proposers in August and September, 2002.

(K) Based on further evaluation by its selection committee utilizing the evaluation factors and selection criteria and following the review and selection process identified in the RFP, the City on October 8, 2002 selected the proposal submitted by or on behalf of the Company as the most advantageous proposal received in response to the City's RFP.

(L) In December, 2002, the City initiated the contract negotiations with the Company which have concluded with this Service Contract.

(M) On February 19, 2003, the City Council adopted a resolution authorizing the execution and delivery of this Service Contract.

(N) CH2M Hill Companies, Ltd. and Thames Water Plc, each an affiliate of the Company, jointly and severally will guarantee the performance of the obligations of the Company under this Service Contract pursuant to separate Guaranty Agreements executed concurrently herewith.

(O) The wastewater, water and stormwater utilities will continue to be owned by the City and certain wastewater, water and stormwater assets will be operated, maintained, repaired, replaced and managed by the Company.

(P) The Company will be responsible for designing, constructing, starting up and testing certain initial capital improvements to the wastewater, water and stormwater systems, pursuant to this Service Contract.

(Q) The City desires to receive, and the Company desires to provide, wastewater, water and stormwater system capital improvement and asset management services under the terms of this Service Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows: